

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 81-182-T - ORDER NO. 82-286

April 28, 1982

IN RE: Application of Low Country Adventures,) Ltd., Post Office Box 4942, Hilton) Head Island, South Carolina 29938, for) a Class C Charter Certificate of Public) Convenience and Necessity.)	ORDER DENYING REHEARING AND RECONSIDERATION
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------

This matter comes before the South Carolina Public Service Commission (hereinafter "the Commission") by way of an Application for Rehearing (hereinafter "the Application") filed by Ann D. Parker d/b/a Ann Parker Island Tours (hereinafter "Parker") requesting certain relief in the nature of rehearing of the matters determined in the proceeding in Order No. 82-157 dated March 12, 1982 in the instant docket wherein the Commission approved the application for a Class C Charter certificate filed by Low Country Adventures, Ltd. (hereinafter "Low Country").

In support of the relief requested Parker asserts the following:

1. That the testimony of Applicant's witness, upon which the Commission relied to support public convenience and necessity, was given by a person who is employed by the applicant and whose testimony was therefore a conflict of interest and misleading.
2. That such information was not known at the time and date of Hearing by the Requestor herein and therefore such is new evidence to be considered by the Commission.

Low Country filed a reply to the Application alleging:

1. That Doris Kirk is not an employee, officer or stockholder and has no pecuniary interest in the business of applicant.
2. That heretofore on or about August 15, 1981, the said Doris [K]irk acted as a substitute guide for applicant when the guide employed by applicant failed to appear for the tour as reference to a sworn statement of the said Doris [K]irk hereto attached and identified as Appendix A will more fully show.
3. That said occasion was the only time the said Doris [K]irk ever worked for applicant and was paid the sum of \$20.00 and a box of beene wafers for her services as reference to said Appendix A will more fully show.

It is well settled in this State that:

In order to warrant the granting of a new trial on the ground of newly discovered evidence, it must appear, (1) That the evidence is such as will probably change the result, if a new trial is granted. (2) That it has been discovered since the trial. (3) That it could not have been discovered before the trial by the exercise of due diligence. (4) That it is material to the issue. (5) That it is not merely cumulative or impeaching. 20 R.C.L., 290, § 72. Quoted with approval in *Evatt v. Campbell*, 106 S.E. 2d 447 at 453 (1959).

Based upon a review of the matters asserted in Parker's Application, the Commission is of the opinion and so finds that Parker has not met the requirements set forth above. Even taken the allegation's as set forth in the Application as true, for the purposes of discussion, the Commission finds that the result would not be changed. The allegations are not such that the Commission would change the result as set forth in Order No. 82-157 and would merely go to the weight of the evidence. The Commission finds that the matters set forth in the Application would not render the testimony of Applicant's witness untrustworthy. The Commission further is convinced that this evidence, with due diligence, should have been discovered prior to the hearing and therefore Applicant has not met requirement number two (2) above. Further, the Commission finds that the evidence would merely be an impeachment of the credibility of the witness and not a disqualification. Therefore, the Applicant is not entitled to a rehearing due to requirement number five (5) above. The Commission further finds that such evidence is not material to the issue before the Commission.

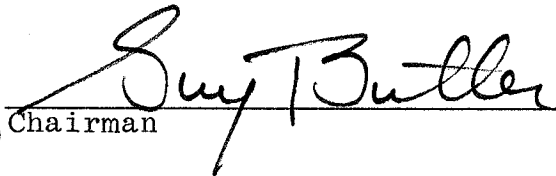
In the final analysis, the Commission finds and concludes that the Applicant has not met the requirements of this State to warrant a new hearing and therefore finds and concludes that the Parker's request for a rehearing should be denied.

IT IS THEREFORE ORDERED:

1. That the relief requested in the Application For Rehearing of Ann D. Parker d/b/a Ann Parker Island Tours, be, and hereby is, denied.

2. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


~~Vice~~ Chairman

ATTEST:


Executive Director

(SEAL)